

Attorney's Docket No.: 14875-057001 / C2-906DP1PCT-US

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jun-ichi Nezu et al. Art Unit : 1646  
 Serial No. : 09/521,195 Examiner : P. Mertz  
 Filed : March 7, 2000  
 Title : TRANSPORTER POLYPEPTIDE AND METHOD OF PRODUCING SAME  
 (previously amended)

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

REPLY TO ACTION OF JULY 10, 2003

In reply to the Office Action of July 10, 2003, Applicants submit the following remarks:

Applicants thank the Examiner for her time and courtesy during the telephonic interview conducted with the undersigned on September 24, 2003. The provisional double patenting rejection was discussed and the Examiner agreed that the application is allowable. The substance of the interview is detailed below.

Status of the Claims

The Office Action indicates that claims 5, 6 and 29 are allowable.

Applicants note that the Office Action indicates that claim 27 is pending and withdrawn. In fact, claim 27 was canceled in the reply filed on June 23, 2003. Accordingly, claims 1-7 and 29-49 are pending and under consideration.

Rejections For Obviousness-Type Double Patenting

Claims 1, 7 and 30-34 are provisionally rejected as unpatentable over claims of co-pending U.S.S.N. 09/798,743. This rejection is respectfully traversed. As discussed with the Examiner, MPEP § 804(I)(B) provides:

## CERTIFICATE OF TRANSMISSION BY FACSIMILE

I hereby certify that this correspondence is being transmitted by facsimile to the Patent and Trademark Office on the date indicated below.

September 24, 2003  
 Date of Transmission  
 Signature *Leda Trivinos*

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The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Such are the circumstances in the instant case. That is, the present provisional obviousness-type double-patenting rejection is the only rejection remaining in the instant application and the current rejections in U.S.S.N. 09/798,743 include a provisional double patenting rejection over claims of the instant application. Thus, as discussed with the Examiner, the rejection in the instant application should be withdrawn. Applicants understand that the provisional double patenting rejection in U.S.S.N. 09/798,743 will become a double patenting rejection at the time the instant application issues.

#### Claim Objections

Claims 2-4 and 35-49 are objected to as being dependent upon rejected base claims. As discussed above, the only remaining rejection of the base claims is a provisional double-patenting rejection that should be withdrawn. Accordingly, Applicants respectfully request that the objections be withdrawn.

No fee is believed to be due at this time. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 24 September 2003



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